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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 4009/2005, CRL.M.C. 4010/2005

VARADA TEXTILES P.LTD. & ANR ..... Petitioner
Through Mr. Anurag Pandey, Advocate

versus

THE STATE & ANR ..... Respondent
Through Ms. Manjusha Wadhwa, Advocate

CORAM:
HON'BLE MR. JUSTICE S.RAVINDRA BHAT

O R D E R

% 06.03.2007

1. In these petitions under Section 482 of the Criminal Procedure Cod an order of the learned Metropolitan Magistrate, New Delhi ('trial Court') dated 07.07.05 declining the accused's request for recall of witness, for further cross-examination, has been impugned.

2. The respondent preferred the complaint before the trial Court, claiming that a cheque for the sum of Rs. 6,98,577/- issued by the petitioner in discharge of its liability, was upon its presentation, not honoured. The petitioner, alleged that the sum was not in discharge of any liability, but deposited by way of security. Notice under Section 251, was issued, and the case went to trial. Evidence through affidavit, of the complainant, was led, and witnesses were cross-examined. On 24.03.05, Shri V.S. Kartikeyan, an Assistant Manager working for the complainant, was cross-examined. He had tendered his affidavit previously. On the next date of hearing, i.e. 07.07.05 an application for recall of the witness was moved, on the ground that important questions had not

been put to the witness. The trial Court rejected the application, moved under Section 311, Cr.P.C.

3. Mr. Anurag Pandey, learned counsel submitted that the trial Court fell into error in declining the application, which was moved at the first available opportunity. He also submitted that no prejudice would have been cause, to the complainant, since Shri Kartikeyan was present on 07.07.05, when the request was declined. He also relied upon the decision in *Rajender Prasad -vs- Narcotic Cell AIR 1999 SC 2292* and submitted that no party in an criminal trial should be foreclosed from correcting errors, and proper defence or inadvertent error creep in the Court should permit the party to take remedial action.

4. Ms. Manjusha Wadhwa, counsel for the complainant opposed the petition. She submitted that the petitioner was never denied opportunity to cross-examined; he utilised it. Change of its counsel was not legitimate cause for seeking leave to cross-examine the witness further. She also submitted that Shri Kartikeyan has now been posted at Kolkata, and it would be inconvenient to produce him.

5. The Supreme Court, in *Rajendra Prasad's* case, had indicated that no party ought to be put to prejudice to omissions and errors. Section 311 is also geared for that objective. Yet, all requests for further cross-examinations cannot be automatically entertained; to do so would result in delay. The ultimate test in each case would be whether, the claims of prejudice, made by the accused is justified. In this case, the order sheet for 07.07.05 discloses that the witness was present in Court; no discernible hardship to the complainant has been

indicated in the order.

6. In view of the submissions on behalf of the complainant, and for the reasons mentioned above, the appropriate order would be to permit the petitioner to cross-examine the witness, subject to terms. Accordingly, the following directions are issued:

1. The parties shall appear before the trial Court on 22.03.07.

2. The petitioner shall pay the sum of Rs. 25,000/- towards the cost of these proceedings as well as the expenses to be incurred by the witnesses (Rs. 15,000/- towards expenses; Rs. 10,000/-as costs). After ensuring the payment of the amounts to the complainant, shall fix a date for the recall of the witness namely Mr. V.S. Karthikeyan and his cross-examination. It is made clear that cross-examination shall be conducted and completed on the same day.

The petitions are allowed in the above terms.

Order Dasti.

S.RAVINDRA BHAT, J

MARCH 06, 2007
as